

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Kotzin)
)
For:	A Method and System for)
	Managing Access to Presence)
	Attribute Information)
)
Serial No.:	10/749,321)
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Filed:	December 31, 2003)
)
Examiner:	Lee, C.)
)
Art Unit:	2181)

Pre-Appeal Brief Request for Review

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant hereby requests review of the final rejection in the above-identified application. No amendments are being filed with this request. The present request is being filed in conjunction with a notice of appeal. The review is being requested for the reasons stated below, which frames the issue to be considered as part of the pre-appeal review process.

The Examiner rejected claims 1, 6, 7, 10, 11, 15, 16 and 19-22 as being unpatentable over Raverdy et al., US Patent No. 6,957,217, in view of **alleged** admitted prior art (AAPA); claims 2-5, 13, 14 and 23 as being unpatentable over Raverdy et al., '217, and AAPA in view of Wade et al., US Patent No. 5,552,776; claims 8, 9, 17 and 18 as being unpatentable over Raverdy et al., '217, and AAPA in view of Fushiki et al., US Patent No. 6,433,704; and claim 12 as being unpatentable over Raverdy et al., '217, and AAPA in view of Kruse et al., US Patent No. 6,684,279. However, contrary to the assertions of the Examiner, the claims are neither anticipated nor made obvious in view of the teachings of the references, either alone, or in combination, in so far as the references fail to make known or obvious each and every feature of the claims. Most notably, the combination of references cited by the Examiner and relied upon

in support of the rejection, fail to make known or obvious a user field associated with presence information, which identifies one or more users that have conditional access to user presence attribute information, as well as one or more associated access condition entries, which defines the conditions when the user presence attribute information is available to the corresponding one or more users.

As part of reopening prosecution the Examiner appears to acknowledge the noted deficiencies, relative to at least the primary reference Raverdy et al., '217, but then relies upon alleged teachings in the background description of the present application, which the Examiner characterizes as admitted prior art, as making known the same. However, not everything the Examiner attempts to identify as admitted prior art can be fairly characterized as admitted prior art. Nor does the Examiner account for the contextual inconsistencies in attempting to relate the allegedly admitted prior art with the teachings, which can be found in the cited and relied upon references. More specifically, not everything in the background of the invention represent admitted prior art. While a portion of the "Background of the Invention" is directed to the state of related technology at the time of the filing, other portions of the background section highlight what can be characterized as an opportunity given the current state of related art.

By way of the background section, the applicant acknowledges that presence attributes historically and at the time of filing are generally used as a way to define, manage and convey a user's relationship relative to a communication network, the same being specifically noted in the background description at page 1, line 10 to page 2, line 4 of the present application. However, the applicant does not suggest that an ability to define "access conditions" relative to the presence attributes exist in the prior art, nor does the applicant suggest that the access conditions are associated with one or more users that may be attempting to obtain the user present attributes. The Examiner is taking language in the background section out of context, and ignoring the fact that some of the background section is devoted to identifying potential problems and/or deficiencies in the prior art (see page 2, lines 5-18 of the present application), and what may be an opportunity (i.e. possible and/or desirable) should a manner in which to overcome those deficiencies be developed (see page 2, line 19 to page 3, line 2 of the present application).

For example, as part of formulating the rejection, the Examiner references page 2, lines 19-22, as being part of the alleged admitted prior art, relied upon. However, at least this

particular section does not form part of any admitted prior art, and therefore the reliance upon such teachings in the manner suggested by the Examiner is misplaced. A full reading of the paragraph, which would place the particular passage in its complete context should clearly classify the passage as being associated with an opportunity, which is not being met by the prior art. The combination of Raverdy et al., '217, and the alleged admitted prior art, serves as the basis for rejection of each of the independent claims as well as the claims which depend therefrom.

As a result not only has the Examiner admitted that many of the claimed elements are neither taught nor suggested by the principal reference, namely Raverdy et al., '217, which is relied upon by the Examiner, but then inappropriately suggests that the features are identified by the applicant as being part of the prior art. As noted above, contrary to the Examiner's suggestion, the prior art as defined by the background of the invention does not teach or suggest an ability to define access conditions relative to the presence attributes, nor is an association of the access conditions with one or more users identified in a user field made known or obvious by the discussed prior art.

In view of the fact that the alleged prior art as described in the background of the art section of the present application fails to in fact attribute each and every one of the acknowledged missing features from the primary reference, Raverdy et al., '217, as being part of the acknowledged prior art, the combination of references and teachings relied upon by the Examiner fail to make known or obvious each and every feature of the claims. As a result, the applicant would respectfully request that the Examiner's final rejection of the claims be withdrawn.

Respectfully submitted,

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